IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.5358 OF 1998

Creative Mobus Fabrics Ltd. Ors. ...Plaintiffs

vs.

M/s.V.Tej Roadlines ...Defendant

Mr.Shailesh Sawant for the Plaintiffs

CORAM: A.S.OKA,J.
DATE : AUGUST 9,2007

ORAL JUDGMENT:

1. The suit is listed under the caption of 'Undefended suits for exparte decree'. The learned counsel for the plaintiffs has tendered on record an affidavit of evidence of Smt.Pratibha Shetty, Officer of the second plaintiff. The affidavit is taken on record and marked 'X' for identification. The learned counsel for the plaintiffs has also tendered on record five original documents along with a list. The said documents along with the list are taken on record marked 'Y' (collectively) for identification.

2. The first plaintiff is the public limited company. The second plaintiff is an insurance company. The defendant firm is doing road transport business. On or about 25th June 1997, the first plaintiff entrusted to the defendant at Jahawarlal Nehru Port Trust, a consignment of 8 sets of stanbli

mechanical electronic jequarels (hereinafter referred to as the said consignment) for transportation up Vapi and deliver the same to the first plaintiffs. According to the plaintiffs the consignment was securely packed when the said consignment was entrusted to the defendant. The defendant accepted the said consignment for carriage and issued a clean lorry receipt dated 25th June 1997.

3. The defendant delivered the said consignment in a damaged condition. The first plaintiff demanded damage certificate from the defendant. Accordingly, the damage certificate dated 5th August 1997 was issued by the defendant. The survey of the said consignment was also carried out at the instance of the plaintiffs by M/s.Young India Engineers and Surveyors, Mumbai. The said surveyors issued survey report dated 4th August 1997. The surveyors recommended allowance of 40% on the damage goods. According to the plaintiffs the said amount was works out to be Rs.4,97,862/-.

4. Initially, the first plaintiff by a letter dated 30th July 1997 gave a notice of claim to the defendant and called upon the defendant to pay a sum of Rs.8,05,044.86. Though the said letter was duly received by the defendant, there was no response. On the basis of the policy of insurance taken out by the first plaintiff from the second plaintiff, the first plaintiff lodged a claim with the second Plaintiff. The

second plaintiff paid the amount as per the claim to the first plaintiff. Thereafter, the first plaintiff issued a letter of subrogation and special power of attorney in favour of the second plaintiff for taking proceeding against the defendant. The claim of the plaintiffs in the suit is for recovery of sum of Rs.4,97,862/- as per the report of the surveyors with interest thereon at the rate of 9% p.a. from the date of institution of the suit till the Judgment and further interest at the rate of 6% p.a.

5. The plaintiffs have tendered on record the original clean lorry receipt dated 25th June 1997 issued by the defendant. The certificate of damage dated 5th August 1997 issued by the defendant is placed on record. The report of surveyors dated 4th August 1997 is also placed on record. The defendant has not contested the suit for establishing that the consignment was carried at the risk of the plaintiffs. The case made out by the plaintiffs in the plaint as well as in the Affidavit is that the defendant was bound to transfer the said consignment and to deliver it safely to the first plaintiff in proper condition.

6. The claim of the plaintiffs has been duly established by the affidavit and the aforesaid documents. However, considering the nature of the suit and facts and circumstances of the case, interest will have to be granted at the rate of

6% p.a.

7. Hence, the suit is decreed in terms of prayer clause (a) with a modification that the interest will be payable on the sum of Rs.4,97,862.00 at the rate of 6% p.a. from the date of institution of the suit till the payment or realisation. It is made clear that the decree is passed only in favour of the second plaintiff.

. The defendant shall pay costs of the suit to the second plaintiff.

. The plaintiffs will be entitled to refund of court fees as per the rules.

. Certified copy is expedited.

JUDGE